

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1817

October 3, 1968

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1817

October 3, 1968

1. APPELLATE DECISIONS - SUSSMAN v. PATERSON.

Ida Sussman, t/a Ike's Tavern,)

Appellant,)

v.)

Board of Alcoholic Beverage)
Control for the City of)
Paterson,)

Respondent.)

On Appeal

CONCLUSIONS
and
ORDER

Richard E. Gruen, Esq., Attorney for Appellant
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, holder of a plenary retail consumption license for premises 581 Main Street, Paterson, was found guilty by respondent (hereinafter Board) of conducting her business as a nuisance in that on January 22, 1968, she allowed, permitted and suffered a brawl, act of violence or other disturbance initiated by her employee, and otherwise conducted her licensed business in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulation No. 20, whereupon her license was revoked effective May 13, 1968.

An order entered May 10, 1968 stayed the revocation pending determination of her appeal.

In her petition of appeal, as amended, appellant alleges that the Board's action was contrary to the weight of the evidence, was arbitrary and discriminatory, "unjustifiably deprived appellant of substantial property rights" and was an abuse of the Board's discretionary powers.

In its answer the Board admits the jurisdictional allegations and denies the substantive allegations of the said petition.

This appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to present testimony under oath and cross-examine witnesses.

The testimony adduced at this plenary hearing with respect to the said charge reflects the following: On Sunday evening, January 21, 1968, at about midnight, five patrons entered the tavern and one of them (Willie Stinson) sought to purchase a bottle of whiskey from James Eason who was acting as bartender. Stinson testified that, when Eason told him the whiskey would cost \$7.50, they left but immediately re-entered, and Stinson discussed this matter with the regular bartender (later identified

as Ernest Henderson). Henderson told him that he could have a quart of whiskey for \$6.50, whereupon Stinson purchased the same. He and his companions seated themselves at a table in the rear of the tavern where they proceeded to consume it. Stinson noted a patron (identified as James Chappell) asleep at the bar, and he walked over and shook him, saying "Mr. Sussman don't allow no sleeping here." He returned to the table, finished consuming the whiskey and, as he walked out, Eason stated, "I wasn't going nowhere and pulled a revolver and fired." Eason was standing behind the bar and fired three shots, one of which apparently struck Stinson. Stinson stated that he visited a doctor that evening and reported the incident to the police the following morning. On cross examination Stinson insisted that Eason was behind the bar during the entire period that he (Stinson) was in the tavern, "a good twenty minutes, something like that."

Lonnie Latimore corroborated the testimony of the prior witness (who is his nephew) and added the following: After Eason fired the third shot, he (Latimore) ran out of the tavern to see what happened to his nephew. Eason followed Latimore into the street and struck him with the gun. This witness accompanied his nephew to the police station, and also was treated by his doctor who put twelve sutures in his head to close the wound. On cross examination Latimore asserted that Eason started to shoot just as Stinson opened the door on his way out of the tavern. The gun was obtained by Eason from behind the bar, and he fired the gun while standing behind the bar.

Detective Jerome Giamonco testified that, at about 12:30 a.m. on January 22, Stinson came into the Detective Bureau and complained that he had been shot at the licensed premises. A police car was dispatched to the said premises and he observed that it was closed. Approximately forty-five minutes after an alarm was sounded for Eason, he was apprehended and taken to police headquarters where he refused to give a statement and was held for further questioning.

Officer William T. Lydecker (assigned to investigate this incident) went to the tavern and found that it had been closed. While on patrol, he spotted Eason's car in front of another tavern. Examination of the glove compartment revealed two guns which were identified and admitted into evidence.

Detective Emil DiRobbio questioned Henderson (the bartender) at police headquarters with reference to the incident in question. Henderson stated, verbally, that Eason came into the bar at about 9:30 on the night of January 21 and "started helping out;" that about an hour before he closed the tavern on January 22 he "heard a shot and fell to the floor behind the bar;" that he did not know who fired the shot. When Henderson closed the tavern, he noticed that the glass pane was shot out of the door. In his voluntary signed statement Henderson added that Eason was working as a regular relief bartender "for the last month" although he did not know whether Eason was on the tavern payroll.

Ida Sussman (the appellant herein) testified that Henderson was the only bartender employed by her; that Eason was employed at these premises on New Year's Eve but, except for that occasion, had never been employed by her at these premises. She was not present at the time of the incident charged.

Ernest H. Henderson, testifying on behalf of appellant, gave the following account: Eason was in the tavern at the time of the said incident but was not behind the bar. Latimore and Stinson entered the tavern with others, purchased a quart of vodka

and went to a table where they consumed the said liquor. Chappell was asleep at the bar and, when Stinson approached Chappell, Henderson "told him to leave the man alone After a while he left him alone and went on about his business. That is all I remember." He continued that he heard the shots, saw the patrons leaving the premises and, when everyone had gone, he closed the premises. On cross examination Henderson insisted that the answers in his statement given to the police were not correct; that he told them the only time Eason was behind the bar was when he said to Eason "Watch the bar until I go to the bathroom." It was pointed out that the statement was taken about fourteen hours after the occurrence of the alleged incident. His only explanation for the discrepancies was that he was "nervous and excited" at the time the statement was given.

James Chappell testified that he was quite drunk when he entered the tavern and, after ordering a drink at the bar, he fell asleep. Stinson pushed him and said, "Chappell, get up and go home." Some argument ensued during which Eason told Stinson to leave him alone. He then heard a shot, everyone fell to the floor, and Henderson closed the bar shortly thereafter. He recalled a struggle between Eason and Stinson, but the whole situation was vague because he had been drinking all day and was intoxicated when he came into the tavern.

James T. Eason, called as a witness on behalf of appellant, gave the following account: Stinson, who was drinking with a group of people in the rear of the tavern, went over to Chappell at the bar, pushed him and told him to wake up and go home. This witness intervened, told Stinson to leave the man alone, and Stinson walked out saying, "I'll be right back." When Stinson returned to the tavern, he went to Chappell and started pushing him around, at which point the bartender Henderson told him to leave the man alone. Stinson pulled out a gun and threatened to shoot Eason. As Stinson pointed the gun at him while leaving the tavern, this witness slammed the door on his hand and he dropped the gun, which went off. Eason picked up the gun and intended to turn it in at police headquarters. However, he was apprehended by the police before he was able to accomplish his intended purpose. On cross examination Eason admitted having been convicted of crime, including that of atrocious assault and battery, for which he was sentenced to one to three years in State Prison.

I have carefully considered the entire record herein and have had an opportunity to observe the demeanor of the witnesses as they appeared and testified. It is obvious that there was an open season on the facts presented by all of the witnesses. From my evaluation and examination of the testimony, I am persuaded that the evidence and disturbance occurred on appellant's licensed premises on the early morning of January 22. The issue to be decided is whether appellant, through her employees, allowed, permitted or suffered such occurrence. Rule 33 of State Regulation No. 20.

The bartender insists that he was busy at the beer box in the rear and saw nothing. Whether there was one incident relating to the quarrel with Chappell or two incidents makes very little difference. Rather than defend Chappell, who was admittedly drunk at the bar, Henderson could have invoked his authority as the manager of these premises and sought to induce him to leave.

Since these incidents took place over a substantial period of time, Henderson had every opportunity to prevent the disturbance. The failure of appellant's employee to take immediate steps to prevent the disturbance and act of violence which occurred was inexcusable

within the entire factual complex. The Division has consistently held that licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Bilowith v. Passaic, Bulletin 527, Item 3; Jackson v. Newark, Bulletin 1600, Item 2.

It is further significant that, although a shooting occurred at the premises, the bartender did not consider it necessary or important to notify the police to seek assistance in quelling the disturbance. As the Director pointed out in Jackson v. Newark, supra, proper supervision required that the licensees' agents should have attempted to nip the disturbance in the bud by quieting the participants, separating them or ejecting them if any one of them persisted in pursuing his belligerent attitude. If all this had failed to achieve its intended purposes, the police should have been called. And, further, where a licensee or his employee becomes aware of the apparent commission of any crime in connection with the licensed business, he should notify the police. The Director impressed this point upon the licensees in order that they, as citizens with a strong stake in proper law enforcement, may assume a leading position in cooperating with law enforcement agencies.

Where, as here, shots were fired and property destroyed in the tavern, the failure of the licensee's agent to take such steps reflects a lack of responsibility on his part. A proper inference may be drawn in the instant matter that the bartender did nothing to prevent the acts alleged.

I am further persuaded that Eason was in fact an employee of appellant at the time of this incident, although that is not ultimately determinative of appellant's guilt or innocence. Eason was identified by several witnesses as being behind the bar. Henderson admitted that he performed some duties for a short period of time and, in the statement to the police made on the following day, Henderson admitted that Eason was a regular relief bartender at the said premises. See Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948); In re Gutman (App. Div. 1952), 21 N.J. Super. 579.

In Essex Molding Corp. v. Hock (Sup. Ct. 1947), 136 N.J.L. 28, the court said that, within the meaning of the alcoholic beverage regulations, the word "suffer" encompasses responsibility on a licensee, regardless of knowledge, where there is a "failure to prevent the prohibited conduct by those occupying the premises with his authority."

I find that both Henderson and Eason failed to prevent the prohibited conduct and that in fact Eason committed the act of violence herein charged. See In re Olympic, Inc., 49 N.J. Super. 299; In re Schneider, 12 N.J. Super. 449.

In order to meet the burden required by Rule 6 of State Regulation No. 15, appellant must show manifest error and that the action of the Board was clearly against the logic and effect of the presented facts. That burden was not met here. Hudson Bergen County Retail Liquor Stores Association v. Hoboken, 135 N. J. L. 502. I therefore conclude that the Board has established the truth of the charge by a fair preponderance of the credible evidence and that it acted reasonably thereon in reaching the determination that appellant was guilty of the said charge. Suppa v. Harrison, Bulletin 1783, Item 2; Greenberg v. Middlesex, Bulletin 1079, Item 5.

Finally, appellant advocates that the penalty of revocation imposed herein was unreasonable and excessive.

In considering the matter of penalty it should be emphasized that a liquor license is a mere privilege. Paul v. Gloucester County, 50 N.J.L. 585; Mazza v. Cavicchia, 15 N.J. 498 (1954). In the exercise of that authority the Legislature invested the issuing authority (the Board) with the power to suspend or revoke licenses, after hearing, for certain enumerated violations, including violations of the law or of State or local regulations. R.S. 33:1-31.

It has generally been held by this Division that a suspension or revocation imposed in disciplinary proceedings rest in the first instance within the sound discretion of the local issuing authority. The power of the Director to reduce or modify it will be sparingly exercised, and only with the greatest caution. Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2; Buckley v. Wallington, Bulletin 1772, Item 1. Penalties may vary in different municipalities and according to the circumstances surrounding each offense. The fact that a penalty may be considered relatively severe does not, of itself, justify reduction on appeal. The Ebony Corporation et al. v. Trenton, Bulletin 958, Item 1; DeLuccia v. Paterson, Bulletin 1781, Item 1.

In fixing the penalty herein, it is my impression that the Board took into consideration, in addition to the finding of guilt on the charge, the prior record of suspensions of appellant's license which was recited in this plenary appeal hearing by William Harris, Secretary of the Board, as follows: (1) for twenty-five days effective January 3, 1967, for sale during hours prohibited by local and State regulation; (2) for thirty days effective May 15, 1967, for sale during hours prohibited by State regulation.

The license had been transferred in 1967 to appellant by her husband Isaac Sussman who had a substantial record of license suspensions at these premises as follows: by the Director for ten days effective August 12, 1957, for sale of alcoholic beverages for off-premises consumption during prohibited hours, and (2) for twenty days effective February 2, 1960, for possession of alcoholic beverages not truly labeled; by the municipal issuing authority (3) for five days effective November 28, 1960, for hindering an investigation; (4) for forty-five days effective April 30, 1962, for permitting brawls and disturbances on the licensed premises; (5) for fifteen days effective November 2, 1964, for sale to minors; and by the Director (6) for twenty-five days effective April 11, 1966, for sale of alcoholic beverages for off-premises consumption during prohibited hours. Re Sussman, Bulletin 1674, Item 5.

It seems abundantly clear that the Board took a serious view of appellant's past record as well as that of her predecessor in interest and felt, on the basis thereof and in view of its findings on this charge, that appellant was concerned with the use of guns on licensed premises, with the general character of the patronage as reflected in the testimony of the witnesses, and the impact that continuance of this business would have upon the public safety and morals. It cannot be convincingly maintained that, as a matter of substantial justice, appellant has been prejudiced in the circumstances presented. Oak Inn, Incorporated v. State et al. (App. Div. 1963), not officially reported, reprinted in Bulletin 1523, Item 2; Benedetti v. Trenton, 35 N.J. Super. 30. As the court stated in In re 17 Club, Inc. (App. Div. 1953), 26 N.J. Super. 43, 52:

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

In the light of the broad discretion vested in the Board, I conclude that its action was not the result of discrimination or other arbitrary action. Further, the penalty, in the totality of the circumstances herein, was not so severe as to form a basis for modification on appeal. It is therefore recommended that an order be entered affirming the Board's action, dismissing the appeal and reimposing the revocation.

Conclusions and Order

Exceptions to the Hearer's report were filed by appellant pursuant to Rule 14 of State Regulation No. 15.

The matters contained in the exceptions are essentially factual in nature and I consider them to be without merit.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the argument of counsel in summation, the Hearer's report and the exceptions thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 19th day of August, 1968,

ORDERED that the action of respondent be and the same is hereby affirmed and that the appeal be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-334, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Ida Sussman, t/a Ike's Tavern, for premises 581 Main Street, Paterson, be and the same is hereby revoked, effective immediately.

JOSEPH M. KEEGAN
DIRECTOR

2. APPELLATE DECISIONS - WILLIAMS v. BLOOMFIELD and BLOOMFIELD LUNCHEONETTE, INC.

Walter J. Williams,)
Appellant,)

v.)

On Appeal

Town Council of the Town of)
Bloomfield, and Bloomfield)
Luncheonette, Inc., t/a)
Yankee Peddler Inn,)

O R D E R

Respondents.
- - - - -)

Patrick J. Hanifin, Esq., Attorney for Appellant
Joseph D. Lintott, Esq., by Henry Sant'Ambrogio, Esq.,
Attorney for Respondent Town Council
Robert F. Colquhoun, Esq., Attorney for Respondent
Bloomfield Luncheonette, Inc.

BY THE DIRECTOR:

Appellant appeals from the grant on May 6, 1968 by respondent Town Council of transfer of a plenary retail consumption license to respondent Bloomfield Luncheonette, Inc. and to premises 24 Broad Street, Bloomfield.

Prior to hearing, appellant's attorney advised me that the appeal was withdrawn.

Accordingly, it is, on this 14th day of August, 1968,

ORDERED that the appeal herein be and the same is hereby dismissed.

JOSEPH M. KEEGAN
DIRECTOR

3. APPELLATE DECISIONS - TOTH v. HAMILTON.

Stephen J. Toth and Mary I.)
Toth, t/a Steve's Sportsmen)
Cafe,)

Appellants,)

On Appeal

v.)

O R D E R

Township Committee of the Township)
of Hamilton (Mercer County),)

Respondent.
- - - - -)

James J. Armstrong, Jr., Esq., Attorney for Appellants
Donald M. Ducko, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellants appeal from the denial by respondent on December 30, 1966, of their application for transfer of their

plenary retail consumption license from premises 517 Lalor Street to premises 2485 Broad Street, Hamilton Township.

After Hearing and submission of the Hearer's report, appellants' attorney advised me that the appeal was withdrawn.

Accordingly, it is, on this 15th day of August, 1968,

ORDERED that the appeal herein be and the same is hereby dismissed.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

REIS CORP.)
t/a Kutchies)
89 Magazine Street)
Newark, New Jersey)

CONCLUSIONS

and

Holder of Plenary Retail Consumption License C-850 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

ORDER

-----)
Licensee, by Anthony Reis, Jr., President, Pro se.
Walter H. Cleaver, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

On March 15, 1968, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Mary ---, age 16, Martha ---, age 18 and Carol ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

The Division offered the testimony of the three minors involved in addition to the testimony of two ABC agents in substantiation of the charge.

At the hearing held on May 8, 1968, Mary testified that she was sixteen years of age and was born on July 30, 1951.

On cross-examination, the witness testified that on March 15, 1968, she was waiting for a male friend outside of the licensed premises. At approximately 9:45 p.m. she was advised to go inside

"because there was a fight across the street with the mission bums." The witness then added, "I went inside and sat by the door with my boy friend. Then some one of the agents came up to me and said, 'Was that my drink on the bar?' I told him it wasn't, and just brought me to the 3rd precinct."

In response to the Hearer's question as to how long she was seated at the bar prior to being approached by the agent she responded, "about half an hour."

Martha testified that she was born on May 8, 1949, and was eighteen years of age on the date alleged in the charge.

On cross-examination, she testified that she was in the licensed premises because she was double dating with Carol "they wanted to stop in for a drink." While conversing with a female with whom she had been acquainted, one of the ABC agents approached her and said that the drink on the bar was her drink. She denied the agent's allegation and testified that the agent "had moved it, you know, maybe two stools away from me."

In response to the Hearer's questioning, the witness replied that she was in the barroom approximately twenty or twenty-five minutes prior to being approached by the agent and she was accompanied by a "Joe Smith".

Carol testified that she was nineteen years of age and was born on January 20, 1949.

On cross-examination, she testified that she was accompanied by a "John Crew" and "We were going to a drive-in and the boys wanted to stop in for a drink." She did not drink.

ABC agent F testified that, pursuant to specific assignment to investigate a complaint that minors were being served alcoholic beverages, he entered the licensed premises on March 15, 1968, at approximately 8:45 p.m. and "sat at the front portion of the bar towards the door." Agent N had preceded him in entering the premises. Tending bar was Anthony Reis, Jr. (the president and major stockholder of the licensee corporation) and a Mr. Jacoby.

At approximately 9:00 p.m., he observed Mary enter the licensed premises, sit approximately three stools to his left and heard her order "a 7 and 7 from Mr. Jacoby." He observed the bartender mix the drink, receive payment therefor and then saw the minor consume the whole drink.

Later he observed Carol enter the licensed premises accompanied by a male and sit to the right of the agent. The male ordered a drink. He heard Carol order ginger ale and Seagram's. She was served the drink by Reis. Carol consumed a portion of the drink.

The agent's attention was then attracted to Martha who entered the licensed premises with a group of three or four other females and "sat at the far end of the bar towards the rear of the premises...." He did not see or hear her order anything. The agent concluded his testimony, as follows:

"Q. At any time during your observations of the minors did any one ever ask them for any identification or any written proof of their age?"

A. At no time when the minors were asking for drinks the bartender never asked them for any identification, nor did they ever show any.

Q. During the period of discussion that followed with Mr. Reis, Mr. Jacoby and the minors after you identified yourselves was the subject of the identification or written representation brought up to them?

A. Yes. Mr. Reis said he had representation, written representation, of Miss Baker's age. He said he had received it prior to this date; she was in there before, and she had signed a piece of paper. We asked him if he had this piece of paper, would he please produce it, and he said that he had it with his books for the business and he would produce it, but he never did produce it."

ABC agent N testified that (pursuant to specific assignment to investigate a complaint of sales to minors) he entered the licensed premises a few minutes prior to Agent F's entry therein and sat toward the rear of the bar, lower level. F sat close to the entrance at the higher level of the bar. At approximately 9:00 p.m. he observed Mary enter with a male friend "and sat closer to Agent F on his left." At approximately 9:30 p.m. Carol entered accompanied by a male and sat between F and N. Shortly thereafter, Martha entered accompanied by three females. He was unable to hear what Mary ordered. He did hear Carol order and observed that she was served by Reis. He heard Martha order a screwdriver, observed the bartender Jacoby mix it and place it in front of her. Martha consumed a part of the drink. He did not observe either Martha or Carol being asked for any identification or written proof of their ages.

On cross-examination, the agent testified that Jacoby was tending bar. When he first entered the licensed premises, Reis was on the patron's side of the bar. When the patronage increased Reis went behind the bar and served the patrons. He observed Reis serve Carol a Seagram's 7 and ginger ale.

In behalf of the licensee, Thomas P. Garrity testified that on the night in question he sat at the bar... "about two or three stools away from Agent N. I wasn't with anybody." He further testified, "As Mary stated, I approached the tavern in my automobile and parked in front, and I left the car to enter the premises, and Mary was standing outside, and there was an argument across the street with the fellows from the mission, and I figured it was safer for her to be inside, she said she was waiting for her boy friend, so she entered the premises with me, and I proceeded to the lower level of the bar, and Mary remained by the doorway."

On cross-examination, the witness testified that he was not Mary's escort and "she might have sat down (at the bar) and got up and sat down again."

On being recalled to the witness stand by the licensee, Mary reiterated that she entered the licensed premises with Mr. Garrity because while waiting for her male escort a fight broke out across the street. She had no intention of drinking and she was not served a drink. She doesn't drink alcoholic beverages. She sat for a while and leaned against a stool facing the window. There was a glass on the bar.

Carol testified that she had not been acquainted with Mr. Reis prior to the night in question and had never been in the licensed premises prior to that night. She stated that the reason for her being there was that her "boy friend wanted to go and have a drink." She was not served a drink.

Martha testified that she did not consume any beverages on the night in question and in particular did not consume a screwdriver.

In essence, Anthony Reis, Jr. testified that Jacoby was not at the end of the bar that Mary was allegedly served a 7 and 7. He, himself, had been physically disabled and was unable to tend bar. He contended that the evidence was insufficient to find him guilty of the charge.

On cross-examination Reis admitted that Mary and Carol appeared to be minors. He was uncertain as to Martha's age.

He then testified as follows:

"Q. Did you have any written representation from any of these minors?

A. No, I never seen them. These girls, I never seen them before. I don't serve minors. I don't have any identification from them at all. They didn't ask me for drinks. I wasn't approached and my bartender wasn't approached."

It should be noted that we are presently dealing with a disciplinary action, and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the proof must be supported by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

It is undisputed that the three females involved, namely, Mary, Martha and Carol, are minors.

It is my firm view that the licensee through its employees, Reis and Jacoby served and delivered alcoholic beverages to the minors involved.

A determination of guilt in these cases need not be based upon a finding that the minors actually consumed an alcoholic beverage in the licensed premises. Rule 1 of State Regulation No. 20 provides, "No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly to any person under the age of twenty-one (21) years...." (emphasis supplied).

In reviewing the testimony, I find that the testimony of ABC agents F and N was wholly credible and factual. F heard Mary order an alcoholic beverage from Jacoby, saw Jacoby mix the drink and accept payment therefor. He then observed Carol enter the premises with a male and heard Carol order ginger ale and Seagram's. Agent N who positioned himself at a different area at the bar heard Martha order a screwdriver, observed Jacoby mix the drink the serve it to Martha.

Contrary to Reis' testimony, the agents observed both Reis and Jacoby tending bar.

On the other hand, it is my view that Reis' testimony and the denials of the minors, on cross-examination, that they were served alcoholic beverages, are unreliable and incredible.

I conclude that the Division has established the truth of the charge by a fair preponderance of the evidence and I recommend that the licensee be found guilty of said charge.

The licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended for thirty days. Cf. Re Gulecki, Bulletin 1639, Item 5; Re Ukrainian National Home, Inc., Bulletin 1630, Item 6.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 20th day of August, 1968,

ORDERED that Plenary Retail Consumption License C-850, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Reis Corp., t/a Kutchies, for premises 89 Magazine Street, Newark, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Tuesday, August 27, 1968, and terminating at 2:00 a.m. Thursday, September 26, 1968.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
Labeled - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

CLUB HIALEAH, INC.)
15 Bloomfield Avenue)
Newark, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-654, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Newark)

Samuel Raffaello, Esq., Attorney for Licensee.
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On October 11, 1967, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

One 4/5 quart bottled labeled 'Ambassador Blended Scotch Whisky, 86 Proof',

One quart bottled labeled '100 Pipers Blended Scotch Whisky, 86 Proof', and

One 4/5 quart bottle labeled 'Vat 69 Gold Classic Light Blended Scotch Whisky, 86.8 Proof';

in violation of Rule 27 of State Regulation No. 20."

ABC Agent D testified that on October 11, 1967, he tested 76 open bottles of alcoholic beverages in the licensed premises and seized three bottles of whisky, after his preliminary tests indicated that the contents of the respective bottles did not correspond with their labels. On cross-examination, Agent D denied that after completion of his examination of the open stock of alcoholic beverages in the premises, Guida handed him the three bottles of whisky and requested tests thereof.

It was stipulated by the attorney for the licensee and the attorney appearing for the Division that the report of John P. Brady, the Division chemist, would be accepted with reference to the contents of the three bottles in question.

The chemical analyses found by the chemist disclosed that the three bottles were low in proof and varied in solid and acid content and color from that found after an examination of the genuine brand of respective whiskies. The chemist concluded in his

report that the three bottles of whisky seized by Agent D were not genuine as labeled.

There was testimony presented by Neil Guida, president of the corporate licensee, that he took the three bottles in question which he had "a long time" and specifically requested Agent D to make tests thereof.

Nicholas Russo testified that he was present and, although he did not hear any conversation between Neil Guida and Agent D, he observed Guida obtain four bottles and hand them to Agent D.

Lena Filandro testified that at the time she was behind the bar washing glasses and saw Guida hand Agent D four bottles and heard him ask that they be checked because the bottles were in the premises since he had taken over the business.

There is no denial that the three bottles now under consideration were found by Agent D in the licensed premises on the date in question.

The licensee is responsible for any alcoholic beverages not truly labeled found upon his licensed premises. Cedar Restaurant & Cafe Co. v. Hock, 135 N. J. L. 156. As the court stated in that case at p. 159:

"We find nothing within the Alcoholic Beverage Control Act, R.S. 33:1-1, et seq., to indicate an intent that the holder of a retail consumption license must have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration."

After careful examination of the testimony, I find as a fact that the charge herein has been established by a fair preponderance of the evidence and recommend that the licensee be found guilty thereof.

Licensee has no prior adjudicated record. Therefore, it is further recommended that the license be suspended for twenty days. Re Cardinali & Strakowski, Bulletin 1788, Item 10.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 20th day of August, 1968,

ORDERED that Plenary Retail Consumption License C-654, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Club Hialeah, Inc. for premises 15 Bloomfield Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, August 27, 1968, and terminating at 2:00 a.m. Monday, September 16, 1968.

JOSEPH M. KEEGAN
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MINNIE McCOY)
t/a Brown Bomber Cafe)
107 Klagg Avenue)
Trenton, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-151 issued by the City Council of the City of Trenton)

Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 24, 1968, she possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re McSharry, Bulletin 1809, Item 9.

Accordingly, it is, on this 10th day of September, 1968,

ORDERED that Plenary Retail Consumption License C-151, issued by the City Council of the City of Trenton to Minnie McCoy, t/a Brown Bomber Cafe, for premises 107 Klagg Avenue, Trenton, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, September 17, 1968, and terminating at 2:00 a.m. Friday, September 27, 1968.

JOSEPH M. KEEGAN
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - CRIMINALLY DISQUALIFIED EMPLOYEE - PRIOR DISSIMILAR RECORD OF EMPLOYEE PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FRED SAJDIK
233 Clinton Street
Hoboken, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-138, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

Florio, Dunn, Marciano & Lypinski, Esqs., by Joseph C. Dunn, Esq.,
Attorneys for Licensee
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

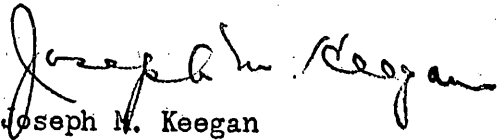
Licensee pleads non vult to a charge alleging that on May 16 and 21, 1968 he employed as a bartender Anna Sajdik (his wife), a person convicted of crime involving moral turpitude, in violation of Rule 1 of State Regulation No. 13.

Although the licensee has no previous record of suspension of license, the license then held for the same premises by Anna Sajdik was suspended by the Director for twenty days effective August 7, 1963, for permitting acceptance of horse race and numbers bets and the conduct of a baseball pool, and again for twenty days effective October 7, 1964, for false statement in her license application, viz., denial of her conviction of crime. Re Sajdik, Bulletin 1527, Item 5; Bulletin 1589, Item 6.

The license will be suspended for twenty days (Re Hubro Industries, Inc., Bulletin 1783, Item 3), to which will be added ten days by reason of the record of two suspensions of license of Anna Sajdik for dissimilar violations occurring within the past five years (Re Baron, Bulletin 1718, Item 6; Re Lotito, Bulletin 1797, Item 5), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 29th day of July 1968,

ORDERED that Plenary Retail Consumption License C-138, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Fred Sajdik, for premises 233 Clinton Street, Hoboken, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, August 5, 1968, and terminating at 2 a.m. Friday, August 30, 1968.


Joseph M. Keegan
Director